

## Internal Revenue Service

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## LEGEND

Foreign Parent =

Parent =

HoldCo =

HoldCo Sub1 =

HoldCo Sub2 =

HoldCo Sub3 =

HoldCo Sub4 =

HoldCo Sub5 =

HoldCo Sub6 =

HoldCo Sub7 =

HoldCo Sub8 =

HoldCo Sub9 =

HoldCo Sub10 =

HoldCo Sub11 =

HoldCo Sub12 =

HoldCo Sub13 =

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HoldCo Sub34 =

HoldCo Sub35 =

HoldCo Sub36 =

HoldCo Sub37 =

HoldCo Sub38 =

HoldCo Sub39 =

HoldCo Sub40 =

HoldCo Sub41 =

HoldCo Sub42 =

HoldCo Sub43 =

FinCo =

U.S. Affiliate =

Foreign Affiliate =

Country X =

State Y =

Business A =

Date 1 =

Date 2 =

Z =

Dear :

This letter responds to your December 30, 2008 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **SUMMARY OF FACTS**

Foreign Parent, a Country X corporation, is the common parent of a worldwide group of corporations (the "Worldwide Group"). The Worldwide Group is engaged in Business A. Foreign Parent owns all of the stock of Parent. Parent, a State Y corporation, is the common parent of an affiliated group of corporations (the "Parent Group") that files a consolidated federal income tax return for U.S federal income tax purposes.

Parent directly owns all of the stock of HoldCo, a State Y corporation. HoldCo performs some direct operations with respect to Business A but is primarily a holding company. HoldCo owns, directly and indirectly, interests in a number of entities, including corporate subsidiaries, partnerships, and disregarded entities. In particular, HoldCo owns, directly and indirectly, all of the stock of HoldCo Sub1 through HoldCo Sub43 (each a "HoldCo Subsidiary" and collectively the "HoldCo Subsidiaries"). Each of the HoldCo Subsidiaries is an operating company and is engaged in Business A. HoldCo also directly owns all of the stock of FinCo, a State Y corporation.

On Date 1, Foreign Parent commenced a bankruptcy proceeding in Country X. Thereafter, on Date 2, Parent and certain of the Parent subsidiaries filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code (the "U.S. Petitioners"). The U.S. Petitioners continue to operate their ongoing business as debtors-in-possession under the jurisdiction of the U.S. Bankruptcy Court and in accordance with the applicable provisions of the U.S. Bankruptcy Code and orders of the U.S. Bankruptcy Court.

Members of the Parent Group have issued a substantial amount of debt to various third-party lenders, to U.S. Affiliate, a related, non-consolidated entity treated as a corporation for U.S. federal tax purposes, and to Foreign Affiliate, a foreign finance corporation wholly owned by Foreign Parent. In addition, FinCo borrowed from third-party lenders pursuant to the issuance of bonds (the “FinCo Bonds”) and lent the proceeds to HoldCo as intercompany debt (the “HoldCo Intercompany Notes”). The terms of the HoldCo Intercompany Notes, to a large extent, mirror the terms of the FinCo Bonds.

The Parent Group historically has grown through acquisitions, and there are now over Z separate legal entities in the U.S. Notwithstanding the proliferation of legal entities, the management and administrative functions of the Worldwide Group are highly centralized. Most administrative functions and transactions are approved and executed at the head office in Country X. The Parent Group has made several attempts, over a number of years, to reduce the number of entities in the U.S. and achieve the goal of entity simplification.

In connection with the bankruptcy process, the Worldwide Group is under significant pressure to simplify and reduce compliance and financial accounting functions and costs associated with its complex corporate structure. Accordingly, the bankruptcy has created a further impetus and an opportunity for the Parent Group to implement entity simplification in the context of the larger restructuring of the Worldwide Group in bankruptcy.

## **PROPOSED TRANSACTIONS**

Consistent with its entity simplification and cost reduction objectives, the Parent Group has proposed the following transactions (the “U.S. Restructuring”), which will occur pursuant to the Joint Plan of Reorganization of the U.S. Petitioners approved by the Bankruptcy Court:

- (i) Through a series of transactions, the debt of the HoldCo Subsidiaries and certain other U.S. Petitioners will be restructured (the “HoldCo Subsidiaries Debt Restructuring”). Pursuant to the HoldCo Subsidiaries Debt Restructuring, third-party creditors, U.S. Affiliate, and Foreign Affiliate will exchange their respective pre-petition debt claims against the HoldCo Subsidiaries for cash, Foreign Parent stock, warrants to acquire Foreign Parent stock, Parent stock, and/or new debt.
- (ii) Through a series of transactions, the debt of each of Parent and HoldCo will be restructured (the “Parent/HoldCo Debt Restructuring”). Pursuant to the Parent/HoldCo Debt Restructuring, third-party creditors, U.S. Affiliate, and Foreign Affiliate will exchange their respective pre-petition debt claims against Parent and HoldCo for cash, Foreign Parent stock, warrants to acquire

Foreign Parent stock, Parent stock, and/or new debt.

- (iii) Through a series of transactions, the debt of FinCo will be restructured (individually, the “FinCo Debt Restructuring” and collectively with the HoldCo Subsidiaries Debt Restructuring and the Parent/HoldCo Debt Restructuring, the “External Debt Restructuring”). Pursuant to the FinCo Debt Restructuring, the holders of the FinCo Bonds will exchange their pre-petition debt claims for Foreign Parent stock and/or warrants to acquire Foreign Parent stock.
- (iv) Certain intercompany debts among members of the Parent Group will be restructured (the “Intercompany Debt Restructuring”). The objectives of the Intercompany Debt Restructuring are: (a) to resolve intercompany debt between two members of the Parent Group in a manner that, consistent with the principles of Rev. Rul. 78-330, 1978-2 C.B. 147, assures that each HoldCo Subsidiary that is merged into Group Two Acquiror or Group Three Acquiror (as defined below) is solvent prior to the merger; and (b) to leave each of Group Two Acquiror and Group Three Acquiror owing an amount of intercompany debt that is consistent with a reasonable capital structure. Portions of the Intercompany Debt Restructuring may occur prior to one or more restructurings described above or after one or more of the mergers described below.

As a result of the External Debt Restructuring and Intercompany Debt Restructuring, various members of the Parent Group will realize discharge of indebtedness income.

Following the HoldCo Subsidiaries Debt Restructuring, certain HoldCo Subsidiaries will be solvent (each a “Group One Subsidiary” and collectively the “Group One Subsidiaries”). Other HoldCo Subsidiaries will become solvent following the HoldCo Subsidiaries Debt Restructuring and the Intercompany Debt Restructuring as a result of the resolution of amounts owed to Parent, HoldCo, and Group One Subsidiaries (each a “Group Two Subsidiary” and collectively the “Group Two Subsidiaries”). Moreover, certain HoldCo Subsidiaries will become solvent following the HoldCo Subsidiaries Debt Restructuring and the Intercompany Debt Restructuring as a result of the resolution of amounts owed to Parent, HoldCo, Group One Subsidiaries, and Group Two Subsidiaries (each a “Group Three Subsidiary” and collectively the “Group Three Subsidiaries”). To the extent that any Group Two Subsidiary or Group Three Subsidiary is the intermediate parent of another lower-tier HoldCo Subsidiary, such HoldCo Subsidiary will be in the same Group as its respective intermediate parent.

- (v) FinCo will form one or more single member limited liability companies, which will be disregarded as entities separate from FinCo for U.S. federal income



tax purposes (individually and collectively, “Newco LLC”).

- (vi) Each of the Group One Subsidiaries will merge into Newco LLC, with Newco LLC surviving (each a “Newco Merger” and collectively the “Newco Mergers”). The Newco Mergers will occur simultaneously or sequentially (or a combination thereof), each under applicable state law. In the case of lower-tier Group One Subsidiaries, the merger of the companies will be deemed to occur, or actually will occur, successively, from the lowest tier to the highest tier. With respect to each Newco Merger, the shareholder of the Group One Subsidiary that merges into Newco LLC will surrender its shares of such Group One Subsidiary solely in actual or constructive exchange for FinCo common stock.
- (vii) HoldCo will merge downstream into FinCo, with FinCo surviving (the “HoldCo Merger”), and the HoldCo Intercompany Notes will be cancelled. Parent will exchange its HoldCo stock solely for FinCo common stock.
- (viii) FinCo will contribute certain assets received in the HoldCo Merger to Newco LLC solely in exchange for Newco LLC interests and Newco LLC’s assumption of associated liabilities.
- (ix) Each of the Group Two Subsidiaries (other than Group Two Acquiror) will merge into Group Two Acquiror (an existing HoldCo Subsidiary), with Group Two Acquiror surviving (each a “Group Two Merger” and collectively the “Group Two Mergers”). The Group Two Mergers will occur simultaneously or sequentially (or a combination thereof), each under applicable state law. In the case of lower-tier Group Two Subsidiaries, the merger of the companies will be deemed to occur, or actually will occur, successively, from the lowest tier to the highest tier. With respect to each Group Two Merger, the shareholder of the Group Two Subsidiary that merges into Group Two Acquiror will surrender its shares of such Group Two Subsidiary solely in actual or constructive exchange for Group Two Acquiror common stock.
- (x) Each of the Group Three Subsidiaries (other than Group Three Acquiror) will merge into: (a) Group Three Acquiror (an existing HoldCo Subsidiary), with Group Three Acquiror surviving; or (b) one or more single member limited liability companies, which will be disregarded as entities separate from Group Three Acquiror for U.S. federal income tax purposes (individually and collectively, “Group Three Acquiror LLC”), with Group Three Acquiror LLC surviving (each a “Group Three Merger” and collectively the “Group Three Mergers”). The Group Three Mergers will occur simultaneously or sequentially (or a combination thereof), each under applicable state law. In the case of lower-tier Group Three Subsidiaries, the merger of the companies will be deemed to occur, or actually will occur, successively, from the lowest

tier to the highest tier. With respect to each Group Three Merger, the shareholder of the Group Three Subsidiary will surrender its shares of such Group Three Subsidiary solely in actual or constructive exchange for Group Three Acquiror common stock.

- (xi) Certain inactive or finance subsidiaries of FinCo may be merged or liquidated.

Following the U.S. Restructuring, Parent will remain as the common parent of the Parent Group and will own all of the stock of FinCo. FinCo will own all of the stock of Group Two Acquiror, all of the stock of Group Three Acquiror, the member interests in Newco LLC and certain other limited liability companies that will be disregarded as separate from FinCo, and (directly or indirectly) all of the stock of certain inactive or finance entities. Group Three Acquiror will own all of the member interests in Group Three Acquiror LLC.

## **REPRESENTATIONS**

### General Representations

- (1a) Parent will remain as the common parent of the Parent Group, and the Parent Group will not terminate.
- (1b) All of the rights and obligations under the HoldCo Intercompany Notes will be extinguished in the HoldCo Merger.
- (1c) The adjusted issue price of the HoldCo Intercompany Notes is equal to FinCo's basis in the HoldCo Intercompany Notes.
- (1d) HoldCo's corresponding item and FinCo's intercompany item (after taking into account the special rules of Treas. Reg. § 1.1502-13(g)(4)(i)(C)) with respect to the HoldCo Intercompany Notes offset in amount.
- (1e) Neither HoldCo, FinCo, nor any Group One Subsidiary has a special status within the meaning of Treas. Reg. § 1.1502-13(c)(5) or attributes subject to a limitation under the separate return limitation year ("SRLY") rules (e.g., Treas. Reg. §§ 1.1502-15, 1.1502-21(c), or 1.1502-22(c)).

### Newco Mergers

Parent makes the following representations with respect to the Newco Mergers, described above in step (vi):

- (2a) Newco LLC will be a single member limited liability company that is disregarded as an entity separate from FinCo (within the meaning of Treas.

Reg. § 1.368-2(b)(1)(i)(A)).

- (2b) The Newco Mergers will be effected pursuant to the laws of the applicable state(s) and will qualify as a statutory merger under applicable state law. Pursuant to the plan of merger, by operation of law, the following will occur simultaneously: (i) all of the assets and liabilities of each Group One Subsidiary (except to the extent satisfied or discharged in the transaction) will become assets and liabilities of Newco LLC; and (ii) such Group One Subsidiary will cease its separate legal existence.
- (2c) The fair market value of FinCo stock actually or constructively received by the shareholder of each Group One Subsidiary will be approximately equal to the fair market value of the applicable Group One Subsidiary stock surrendered in the exchange.
- (2d) At least 40 percent of the proprietary interest in each Group One Subsidiary will be exchanged actually or constructively for FinCo stock and will be preserved (within the meaning of Treas. Reg. § 1.368-1(e)(1)).
- (2e) Except as described herein, neither FinCo nor any person related (within the meaning of Treas. Reg. § 1.368-1(e)(4)) to FinCo has any plan or intention to reacquire any FinCo stock issued in the Newco Mergers.
- (2f) FinCo has no plan or intention to sell or otherwise dispose of any of the assets of each Group One Subsidiary acquired in the applicable Newco Merger, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).
- (2g) The liabilities of each Group One Subsidiary assumed (within the meaning of section 357(d)) by FinCo were incurred by such Group One Subsidiary in the ordinary course of its business and are associated with the assets transferred.
- (2h) Following the Newco Mergers, FinCo will continue the historic business of each Group One Subsidiary or will use a significant portion of such Group One Subsidiary's historic business assets in a business.
- (2i) The parties to the Newco Mergers will pay their respective expenses, if any, incurred in connection with the Newco Mergers.
- (2j) No intercorporate indebtedness exists between any Group One Subsidiary and FinCo that was issued, acquired, or will be settled at a discount.

- (2k) No two parties to any Newco Merger are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (2l) Following the External Debt Restructuring, and immediately before the applicable Newco Merger, the total fair market value of each Group One Subsidiary's assets transferred to FinCo will exceed the sum of: (i) the amount of liabilities assumed (as determined under section 357(d)) by FinCo in connection with the applicable Newco Merger; (ii) the amount of liabilities owed to FinCo by the applicable Group One Subsidiary that is discharged or extinguished in connection with the applicable Newco Merger; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by the applicable Group One Subsidiary in connection with the applicable Newco Merger.
- (2m) The fair market value of FinCo's assets will exceed its liabilities immediately after the Newco Mergers.

#### HoldCo Merger

Parent makes the following representations with respect to the HoldCo Merger, described above in step (vii):

- (3a) The HoldCo Merger will be effected pursuant to the laws of the applicable state(s) and will qualify as a statutory merger under applicable state law. Pursuant to the plan of merger, by operation of law, the following will occur simultaneously: (i) all of the assets and liabilities of HoldCo (except to the extent satisfied or discharged in the transaction) will become assets and liabilities of FinCo; and (ii) HoldCo will cease its separate legal existence.
- (3b) The fair market value of FinCo stock received by Parent will be approximately equal to the fair market value of the HoldCo stock surrendered in the exchange.
- (3c) At least 40 percent of the proprietary interest in HoldCo will be exchanged for FinCo stock and will be preserved (within the meaning of Treas. Reg. § 1.368-1(e)(1)).
- (3d) Neither FinCo nor any person related (within the meaning of Treas. Reg. § 1.368-1(e)(4)) to FinCo has any plan or intention to reacquire any FinCo stock issued in the HoldCo Merger.
- (3e) FinCo has no plan or intention to sell or otherwise dispose of any of the assets of HoldCo acquired in the HoldCo Merger, except for dispositions

made in the ordinary course of business or transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).

- (3f) The liabilities of HoldCo assumed (within the meaning of section 357(d)) by FinCo were incurred by HoldCo in the ordinary course of its business and are associated with the assets transferred.
- (3g) Following the HoldCo Merger, FinCo will continue the historic business of HoldCo or will use a significant portion of HoldCo's historic business assets in a business.
- (3h) HoldCo and FinCo will pay their respective expenses, if any, incurred in connection with the HoldCo Merger.
- (3i) No intercorporate indebtedness exists between HoldCo and FinCo that was issued, acquired, or will be settled at a discount.
- (3j) No two parties to the HoldCo Merger are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (3k) Following the External Debt Restructuring, and immediately before the HoldCo Merger, the total fair market value of HoldCo's assets transferred to FinCo will exceed the sum of: (i) the amount of liabilities assumed (as determined under section 357(d)) by FinCo in connection with the HoldCo Merger; (ii) the amount of liabilities owed to FinCo by HoldCo that is discharged or extinguished in connection with the HoldCo Merger; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by HoldCo in connection with the HoldCo Merger.
- (3l) The fair market value of FinCo's assets will exceed its liabilities immediately after the HoldCo Merger.

#### Group Two Mergers

Parent makes the following representations with respect to the Group Two Mergers, described above in step (ix):

- (4a) The Group Two Mergers will be effected pursuant to the laws of the applicable state(s) and will qualify as a statutory merger under applicable state law. Pursuant to the plan of merger, by operation of law, the following will occur simultaneously: (i) all of the assets and liabilities of each Group Two Subsidiary (except to the extent satisfied or discharged in the transaction) will

- become assets and liabilities of Group Two Acquiror; and (ii) such Group Two Subsidiary will cease its separate legal existence.
- (4b) The fair market value of Group Two Acquiror stock actually or constructively received by the shareholder of each Group Two Subsidiary will be approximately equal to the fair market value of the applicable Group Two Subsidiary stock surrendered in the exchange.
  - (4c) At least 40 percent of the proprietary interest in each Group Two Subsidiary will be exchanged actually or constructively for Group Two Acquiror stock and will be preserved (within the meaning of Treas. Reg. § 1.368-1(e)(1)).
  - (4d) Except as described herein, neither Group Two Acquiror nor any person related (within the meaning of Treas. Reg. § 1.368-1(e)(4)) to Group Two Acquiror has any plan or intention to reacquire any Group Two Acquiror stock issued in each of the Group Two Mergers.
  - (4e) Group Two Acquiror has no plan or intention to sell or otherwise dispose of any of the assets of each Group Two Subsidiary acquired in the applicable Group Two Merger, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).
  - (4f) The liabilities of each Group Two Subsidiary assumed (within the meaning of section 357(d)) by Group Two Acquiror were incurred by such Group Two Subsidiary in the ordinary course of its business and are associated with the assets transferred.
  - (4g) Following the Group Two Mergers, Group Two Acquiror will continue the historic business of each Group Two Subsidiary or will use a significant portion of such Group Two Subsidiary's historic business assets in a business.
  - (4h) The parties to the Group Two Mergers will pay their respective expenses, if any, incurred in connection with the Group Two Mergers.
  - (4i) No intercorporate indebtedness exists between any Group Two Subsidiary and Group Two Acquiror that was issued, acquired, or will be settled at a discount.
  - (4j) No two parties to any Group Two Merger are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

- (4k) Following the External Debt Restructuring and the Intercompany Debt Restructuring, and immediately before the applicable Group Two Merger, the total fair market value of each Group Two Subsidiary's assets transferred to Group Two Acquiror will exceed the sum of: (i) the amount of liabilities assumed (as determined under section 357(d)) by Group Two Acquiror in connection with the applicable Group Two Merger; (ii) the amount of liabilities owed to Group Two Acquiror by the applicable Group Two Subsidiary that is discharged or extinguished in connection with the applicable Group Two Merger; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by the applicable Group Two Subsidiary in connection with the applicable Group Two Merger.
- (4l) The fair market value of Group Two Acquiror's assets will exceed its liabilities immediately after the Group Two Mergers.

#### Group Three Mergers

Parent makes the following representations with respect to the Group Three Mergers, described above in step (x):

- (5a) Group Three Acquiror LLC will be a single member limited liability company that is disregarded as an entity separate from Group Three Acquiror (within the meaning of Treas. Reg. § 1.368-2(b)(1)(i)(A)).
- (5b) The Group Three Mergers will be effected pursuant to the laws of the applicable state(s) and will qualify as a statutory merger under applicable state law. Pursuant to the plan of merger, by operation of law, the following will occur simultaneously: (i) all of the assets and liabilities of each Group Three Subsidiary (except to the extent satisfied or discharged in the transaction) will become assets and liabilities of Group Three Acquiror or Group Three Acquiror LLC (as described in step (x) above); and (ii) such Group Three Subsidiary will cease its separate legal existence.
- (5c) The fair market value of Group Three Acquiror stock actually or constructively received by the shareholder of each Group Three Subsidiary will be approximately equal to the fair market value of the applicable Group Three Subsidiary stock surrendered in the exchange.
- (5d) At least 40 percent of the proprietary interest in each Group Three Subsidiary will be exchanged actually or constructively for Group Three Acquiror stock and will be preserved (within the meaning of Treas. Reg. § 1.368-1(e)(1)).

- (5e) Except as described herein, neither Group Three Acquiror nor any person related (within the meaning of Treas. Reg. § 1.368-1(e)(4)) to Group Three Acquiror has any plan or intention to reacquire any Group Three Acquiror stock issued in each of the Group Three Mergers.
- (5f) Group Three Acquiror has no plan or intention to sell or otherwise dispose of any of the assets of each Group Three Subsidiary acquired in the applicable Group Three Merger, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).
- (5g) The liabilities of each Group Three Subsidiary assumed (within the meaning of section 357(d)) by Group Three Acquiror were incurred by such Group Three Subsidiary in the ordinary course of its business and are associated with the assets transferred.
- (5h) Following the Group Three Mergers, Group Three Acquiror will continue the historic business of each Group Three Subsidiary or will use a significant portion of such Group Three Subsidiary's historic business assets in a business.
- (5i) The parties to the Group Three Mergers will pay their respective expenses, if any, incurred in connection with the Group Three Mergers.
- (5j) No intercorporate indebtedness exists between any Group Three Subsidiary and Group Three Acquiror that was issued, acquired, or will be settled at a discount.
- (5k) No two parties to any Group Three Merger are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (5l) Following the External Debt Restructuring and the Intercompany Debt Restructuring, and immediately before the applicable Group Three Merger, the total fair market value of each Group Three Subsidiary's assets transferred to Group Three Acquiror will exceed the sum of: (i) the amount of liabilities assumed (as determined under section 357(d)) by Group Three Acquiror in connection with the applicable Group Three Merger; (ii) the amount of liabilities owed to Group Three Acquiror by the applicable Group Three Acquiror that is discharged or extinguished in connection with the applicable Group Three Merger; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by the applicable Group Three Subsidiary in connection with the applicable Group



Three Merger.

- (5m) The fair market value of Group Three Acquiror's assets will exceed its liabilities immediately after the Group Three Mergers.

## **RULINGS**

### **General Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) The HoldCo Merger will not result in the creation and recapture (or in an increase to and recapture) of an excess loss account ("ELA"), if any, with respect to the stock of FinCo as a result of the extinguishment of the HoldCo Intercompany Notes. Treas. Reg. §§ 1.1502-13(g)(3), 1.1502-19(b) and (c).
- (2) With respect to discharge of indebtedness income ("COD income") that is realized directly ("direct COD income") by HoldCo, FinCo, and the Group One Subsidiaries as a result of the External Debt Restructuring and that is excluded from gross income under section 108(a), the liability floor of section 1017(b)(2) will be determined at the FinCo level by taking into account the bases of FinCo's assets and the amount of FinCo's liabilities immediately after all of the steps of the U.S. Restructuring. Treas. Reg. § 1.1502-28(b)(9). Solely for purposes of applying the liability floor of section 1017(b)(2) at the FinCo level, the External Debt Restructuring will be deemed to occur immediately after the other steps of the U.S. Restructuring. With respect to any COD income treated as realized pursuant to Treas. Reg. § 1.1502-28(a)(3)(ii) ("look-through COD income") by FinCo as a result of the External Debt Restructuring, the liability floor of section 1017(b)(2) will be determined at the FinCo level by taking into account the bases of FinCo's assets and the amount of FinCo's liabilities on the last day of the taxable year of the higher-tier member that includes the date on which the higher-tier member realized the COD income giving rise to the look-through COD income at the FinCo level.
- (3) With respect to direct COD income that is realized by Group Two Acquiror and the Group Two Subsidiaries as a result of the External Debt Restructuring and that is excluded from gross income under section 108(a), the liability floor of section 1017(b)(2) will be determined at the Group Two Acquiror level by taking into account the bases of Group Two Acquiror's assets and the amount of Group Two Acquiror's liabilities immediately after all of the steps of the U.S. Restructuring. Treas. Reg. § 1.1502-28(b)(9). Solely for purposes of applying the liability floor of section 1017(b)(2) at the Group

- Two Acquiror level, the External Debt Restructuring will be deemed to occur immediately after the other steps of the U.S. Restructuring. With respect to any look-through COD income treated as realized by Group Two Acquiror as a result of the External Debt Restructuring, the liability floor of section 1017(b)(2) will be determined at the Group Two Acquiror level by taking into account the bases of Group Two Acquiror's assets and the amount of Group Two Acquiror's liabilities on the last day of the taxable year of the higher-tier member that includes the date on which the higher-tier member realized the COD income giving rise to the look-through COD income at the Group Two Acquiror level.
- (4) With respect to direct COD income that is realized by Group Three Acquiror and the Group Three Subsidiaries as a result of the External Debt Restructuring and that is excluded from gross income under section 108(a), the liability floor of section 1017(b)(2) will be determined at the Group Three Acquiror level by taking into account the bases of Group Three Acquiror's assets and the amount of Group Three Acquiror's liabilities immediately after all of the steps of the U.S. Restructuring. Treas. Reg. § 1.1502-28(b)(9). Solely for purposes of applying the liability floor of section 1017(b)(2) at the Group Three Acquiror level, the External Debt Restructuring will be deemed to occur immediately after the other steps of the U.S. Restructuring. With respect to any look-through COD income treated as realized by Group Three Acquiror as a result of the External Debt Restructuring, the liability floor of section 1017(b)(2) will be determined at the Group Three Acquiror level by taking into account the bases of Group Three Acquiror's assets and the amount of Group Three Acquiror's liabilities on the last day of the taxable year of the higher-tier member that includes the date on which the higher-tier member realized the COD income giving rise to the look-through COD income at the Group Three Acquiror level.
- (5) The extent to which an ELA in a share of FinCo stock (or a share of any predecessor thereto in the Newco Mergers or the HoldCo Merger) must be taken into account as a result of direct COD income realized by HoldCo, FinCo, and the Group One Subsidiaries that is not included in gross income and not treated as tax exempt income under Treas. Reg. § 1.1502-32(b)(3)(ii)(C) will be determined after giving effect to all of the steps of the U.S. Restructuring, and will be based upon Parent's basis in the FinCo stock immediately after the U.S. Restructuring. Treas. Reg. §§ 1.1502-19(b), (c), and (f), and 1.1502-28(b)(6) and (9).
- (6) The extent to which an ELA in a share of Group Two Acquiror stock (or a share of any predecessor thereto in the Group Two Mergers) must be taken into account as a result of direct COD income realized by Group Two Acquiror and the Group Two Subsidiaries that is not included in gross income and not

- treated as tax exempt income under Treas. Reg. § 1.1502-32(b)(3)(ii)(C) will be determined after giving effect to all of the steps of the U.S. Restructuring, and will be based upon FinCo's basis in the Group Two Acquiror stock immediately after the U.S. Restructuring. Treas. Reg. §§ 1.1502-19(b), (c), and (f), and 1.1502-28(b)(6) and (9).
- (7) The extent to which an ELA in a share of Group Three Acquiror stock (or a share of any predecessor thereto in the Group Three Mergers) must be taken into account as a result of direct COD income realized by Group Three Acquiror and the Group Three Subsidiaries that is not included in gross income and not treated as tax exempt income under Treas. Reg. § 1.1502-32(b)(3)(ii)(C) will be determined after giving effect to all of the steps of the U.S. Restructuring, and will be based upon FinCo's basis in the Group Three Acquiror stock immediately after the U.S. Restructuring. Treas. Reg. §§ 1.1502-19(b), (c), and (f), and 1.1502-28(b)(6) and (9).

#### Newco Mergers

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Newco Mergers:

- (8) Provided that each of the Newco Mergers qualifies as a statutory merger under applicable state law, each of the Newco Mergers will constitute a reorganization within the meaning of section 368(a)(1)(A). Rev. Rul. 78-330, 1978-2 C.B. 147; Rev. Rul. 68-526, 1968-2 C.B. 156. FinCo and each Group One Subsidiary each will be "a party to a reorganization" within the meaning of section 368(b).
- (9) No gain or loss will be recognized by each Group One Subsidiary on the transfer of its assets to FinCo in exchange for FinCo stock and the assumption by FinCo of the liabilities of each respective Group One Subsidiary. Sections 361(a) and 357(a).
- (10) No gain or loss will be recognized by FinCo on its receipt of assets of each Group One Subsidiary in exchange for FinCo stock and the assumption of liabilities by FinCo of each respective Group One Subsidiary. Section 1032(a).
- (11) Each Group One Subsidiary will recognize no gain or loss on the distribution of FinCo stock to its shareholders. Section 361(c).
- (12) The basis of the assets of each Group One Subsidiary in the hands of FinCo will be the same as the basis of such assets in the hands of each respective

Group One Subsidiary. Section 362(b).

- (13) The holding period of the assets of each Group One Subsidiary received by FinCo will include the period during which the assets were held by each respective Group One Subsidiary. Section 1223(2).
- (14) No shareholder of a Group One Subsidiary will recognize gain or loss on the receipt of FinCo stock (including a fractional share interest) in exchange for Group One Subsidiary stock pursuant to the Newco Mergers. Section 354(a)(1).
- (15) A Group One Subsidiary shareholder's basis in the FinCo stock (including a fractional share interest) received pursuant to the Newco Mergers will equal the basis of the Group One Subsidiary stock held immediately before the Newco Mergers, and will be adjusted for any allocation to eliminate and equalize an excess loss account. Section 358(a)(1) and Treas. Reg. § 1.1502-19(d).
- (16) A Group One Subsidiary shareholder's holding period in the FinCo stock (including a fractional share interest) received pursuant to the Newco Mergers will include the period during which the Group One Subsidiary stock surrendered in exchange therefor was held, provided that the Group One Subsidiary stock was held as a capital asset on the date of the Newco Mergers. Section 1223(1).
- (17) FinCo will succeed to and take into account as of the close of the date of each Newco Merger, the items of each Group One Subsidiary described in section 381(c) subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder.
- (18) FinCo will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of each Group One Subsidiary as of the date of each Newco Merger. Section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33. Any deficit in the earnings and profits of FinCo or a Group One Subsidiary will be used only to offset earnings and profits accumulated after the date of the Newco Mergers. Section 381(c)(2)(B).

#### HoldCo Merger

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the HoldCo Merger:

- (19) Provided that the HoldCo Merger qualifies as a statutory merger under applicable state law, the HoldCo Merger will constitute a reorganization within

the meaning of section 368(a)(1)(A). Rev. Rul. 78-330, 1978-2 C.B. 147. FinCo and HoldCo each will be "a party to a reorganization" within the meaning of section 368(b).

- (20) No gain or loss will be recognized by HoldCo on the transfer of its assets to FinCo in exchange for FinCo stock and the assumption by FinCo of the liabilities of HoldCo. Sections 361(a) and 357(a).
- (21) No gain or loss will be recognized by FinCo on the receipt of assets of HoldCo in exchange for FinCo stock and the assumption of liabilities by FinCo of HoldCo. Section 1032(a).
- (22) HoldCo will recognize no gain or loss on the distribution of FinCo stock to Parent. Section 361(c).
- (23) The basis of the assets of HoldCo in the hands of FinCo will be the same as the basis of such assets in the hands of HoldCo. Section 362(b).
- (24) The holding period of the assets of HoldCo received by FinCo will include the period during which the assets were held by HoldCo. Section 1223(2).
- (25) Parent will not recognize gain or loss on the receipt of FinCo stock (including a fractional share interest) in exchange for HoldCo stock pursuant to the Holdco Merger. Section 354(a)(1).
- (26) Parent's basis in the FinCo stock (including a fractional share interest) received pursuant to the HoldCo Merger will equal the basis of the HoldCo stock held immediately before the HoldCo Merger. Section 358(a)(1).
- (27) Parent's holding period in the FinCo stock (including a fractional share interest) received pursuant to the HoldCo Merger will include the period during which the HoldCo stock surrendered in exchange therefor was held, provided that the HoldCo stock was held as a capital asset on the date of the HoldCo Merger. Section 1223(1).
- (28) FinCo will succeed to and take into account as of the close of the date of the HoldCo Merger, the items of HoldCo described in section 381(c) subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder.
- (29) FinCo will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of HoldCo as of the date of the HoldCo Merger. Section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33. Any deficit in the earnings and profits of FinCo or HoldCo will be used only to

offset earnings and profits accumulated after the date of the HoldCo Merger. Section 381(c)(2)(B).

### Group Two Mergers

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Group Two Mergers:

- (30) Provided that each of the Group Two Mergers qualifies as a statutory merger under applicable state law, each of the Group Two Mergers will constitute a reorganization within the meaning of section 368(a)(1)(A). Rev. Rul. 78-330, 1978-2 C.B. 147; Rev. Rul. 68-526, 1968-2 C.B. 156. Group Two Acquiror and each Group Two Subsidiary each will be "a party to a reorganization" within the meaning of section 368(b).
- (31) No gain or loss will be recognized by each Group Two Subsidiary on the transfer of its assets to Group Two Acquiror in exchange for Group Two Acquiror stock and the assumption by Group Two Acquiror of the liabilities of each respective Group Two Subsidiary. Sections 361(a) and 357(a).
- (32) No gain or loss will be recognized by Group Two Acquiror on the receipt of assets of each Group Two Subsidiary in exchange for Group Two Acquiror stock and the assumption of liabilities by Group Two Acquiror of each respective Group Two Subsidiary. Section 1032(a).
- (33) Each Group Two Subsidiary will recognize no gain or loss on the distribution of Group Two Acquiror stock to its shareholders. Section 361(c).
- (34) The basis of the assets of each Group Two Subsidiary in the hands of Group Two Acquiror will be the same as the basis of such assets in the hands of each respective Group Two Subsidiary. Section 362(b).
- (35) The holding period of the assets of each Group Two Subsidiary received by Group Two Acquiror will include the period during which the assets were held by each respective Group Two Subsidiary. Section 1223(2).
- (36) No shareholder of a Group Two Subsidiary will recognize gain or loss on the receipt of Group Two Acquiror stock (including a fractional share interest) in exchange for Group Two Subsidiary stock pursuant to the Group Two Mergers. Section 354(a)(1).
- (37) A Group Two Subsidiary shareholder's basis in the Group Two Acquiror stock (including a fractional share interest) received pursuant to the Group Two Mergers will equal the basis of the Group Two Subsidiary stock held

immediately before the Group Two Mergers, and will be adjusted for any allocation to eliminate and equalize an excess loss account. Section 358(a)(1) and Treas. Reg. § 1.1502-19(d).

- (38) A Group Two Subsidiary shareholder's holding period in the Group Two Acquiror stock (including a fractional share interest) received pursuant to the Group Two Mergers will include the period during which the Group Two Subsidiary stock surrendered in exchange therefor was held, provided that the Group Two Subsidiary stock was held as a capital asset on the date of the Group Two Mergers. Section 1223(1).
- (39) Group Two Acquiror will succeed to and take into account as of the close of the date of each Group Two Merger, the items of each Group Two Subsidiary described in section 381(c) subject to the conditions and limitations specified in section 381, 382, 383, and 384 and the regulations thereunder.
- (40) Group Two Acquiror will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of each Group Two Subsidiary as of the date of each Group Two Merger. Section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33. Any deficit in the earnings and profits of Group Two Acquiror or a Group Two Subsidiary will be used only to offset earnings and profits accumulated after the date of the Group Two Mergers. Section 381(c)(2)(B).

#### Group Three Mergers

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to Group Three Mergers:

- (41) Provided that each of the Group Three Mergers qualifies as a statutory merger under applicable state law, each of the Group Three Mergers will constitute a reorganization within the meaning of section 368(a)(1)(A). Rev. Rul. 78-330, 1978-2 C.B. 147; Rev. Rul. 68-526, 1968-2 C.B. 156. Group Three Acquiror and each Group Three Subsidiary each will be "a party to a reorganization" within the meaning of section 368(b).
- (42) No gain or loss will be recognized by each Group Three Subsidiary on the transfer of its assets to Group Three Acquiror in exchange for Group Three Acquiror stock and the assumption by Group Three Acquiror of the liabilities of each respective Group Three Subsidiary. Sections 361(a) and 357(a).
- (43) No gain or loss will be recognized by Group Three Acquiror on the receipt of assets of each Group Three Subsidiary in exchange for Group Three Acquiror stock and the assumption of liabilities by Group Three Acquiror of each

respective Group Three Subsidiary. Section 1032(a).

- (44) Each Group Three Subsidiary will recognize no gain or loss on the distribution of Group Three Acquiror stock to its shareholders. Section 361(c).
- (45) The basis of the assets of each Group Three Subsidiary in the hands of Group Three Acquiror will be the same as the basis of such assets in the hands of each respective Group Three Subsidiary. Section 362(b).
- (46) The holding period of the assets of each Group Three Subsidiary received by Group Three Acquiror will include the period during which the assets were held by each respective Group Three Subsidiary. Section 1223(2).
- (47) No shareholder of a Group Three Subsidiary will recognize gain or loss on the receipt of Group Three Acquiror stock (including a fractional share interest) in exchange for Group Three Subsidiary stock pursuant to the Group Three Mergers. Section 354(a)(1).
- (48) A Group Three Subsidiary shareholder's basis in the Group Three Acquiror stock (including a fractional share interest) received pursuant to the Group Three Mergers will equal the basis of the Group Three Subsidiary stock held immediately before the Group Three Mergers, and will be adjusted for any allocation to eliminate and equalize an excess loss account. Section 358(a)(1) and Treas. Reg. § 1.1502-19(d).
- (49) A Group Three Subsidiary shareholder's holding period in the Group Three Acquiror stock (including a fractional share interest) received pursuant to the Group Three Mergers will include the period during which the Group Three Subsidiary stock surrendered in exchange therefor was held, provided that the Group Three Subsidiary stock was held as a capital asset on the date of the Group Three Mergers. Section 1223(1).
- (50) Group Three Acquiror will succeed to and take into account as of the close of the date of each Group Three Merger, the items of each Group Three Subsidiary described in section 381(c) subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder.
- (51) Group Three Acquiror will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of each Group Three Subsidiary as of the date of each Group Three Merger. Section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33. Any deficit in the earnings and profits of Group Three Acquiror or a Group Three Subsidiary will be used only to offset



earnings and profits accumulated after the date of the Group Three Mergers. Section 381(c)(2)(B).

### **CAVEATS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the U.S. Restructuring under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the U.S. Restructuring that are not specifically covered by the above rulings. In particular, we express no opinion regarding the federal income tax consequences of:

- (i) the External Debt Restructuring (as described in steps (i), (ii), and (iii) above);
- (ii) the Intercompany Debt Restructuring (as described in step (iv) above);
- (iii) the possible merger or liquidation of any inactive or finance subsidiaries of FinCo (as described in step (xi) above); and
- (iv) the Newco Mergers, the HoldCo Merger, the Group Two Mergers, or the Group Three Mergers with respect to any partnerships owned by members of the Parent Group.

### **PROCEDURAL STATEMENTS**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Frances L. Kelly  
Assistant to the Branch Chief, Branch 2  
Office of Chief Counsel (Corporate)